

10  
No. 82-6419

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IN THE  
SUPREME COURT OF THE UNITED STATES  
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October Term, 1982  
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Thomas Robert Lacher,

Appellant,

v

City of Bemidji,

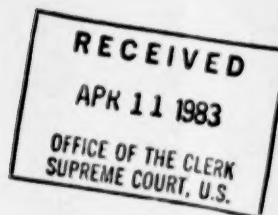
Appellee.  
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On Appeal from the Supreme Court of Minnesota  
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Brief in Response to Appellee's Motion to Dismiss or Affirm  
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David Skeen, Counsel  
Of Record For Appellant  
880 Lumber Exchange Bldg.  
10 South 5th Street  
Minneapolis, MN 55402  
612/333-3343

Of Counsel:  
Amy Silberberg,  
Minnesota Civil Liberties Union  
628 Central Avenue  
Minneapolis, MN 55414  
612/378-2436



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### STATEMENT OF THE CASE

The Appellee misstates some of the factual background in this case. No indigent requests appointed counsel, it is a constitutional right required to be provided by the state. An accused qualifies for court-appointed counsel based on a lack of financial resources. It is the duty of a judge in Minnesota to make the determination of indigency based on the financial inquiry form and questioning of the accused regarding his resources. Court-appointed counsel is appointed by the judge only if the accused is eligible.

The record in this case is devoid of any basis for the Court's Order imposing the obligation to reimburse the appointing authority for court-appointed attorney's fees. The Appellee, however, cites three statutory provisions as the basis for the Order. In actual fact, the judge made no statement as to the grounds for his Order.

The Appellee makes much of the fact that the Appellant failed to appear on January 10, 1983, to contest the imposition of the court-appointed attorney's fees. Reference to the letter of the Court dated December 30, 1982, (Jurisdictional Statement C-4) indicates that the Court did not give the Appellant the choices stated by the Appellee. The letter makes it perfectly clear that failure to pay the amount stated in the letter would result in a warrant for the Appellant's arrest. Rather than face the possibility of imprisonment, the Appellant contacted legal counsel who prepared the Petition for Writ of Prohibition dated January 10, 1983, the date for response to the letter. This may only be construed as a response by the Appellant to the letter and does not

evidence a failure to appear or respond to the Court. In fact, the response was that the Court was violating the Appellant's constitutional rights and the Appellant was asserting a defense to the Court's action.

#### THE QUESTION IS SUBSTANTIAL

The Order of the Minnesota Supreme Court denying Appellant's Petition for a Writ of Prohibition did not specify the reason for such action. The Appellee now claims that the Minnesota Supreme Court did not consider federal constitution issues but instead based its decision solely upon independent and adequate state grounds. This conclusion is not supported by the facts and is an obvious attempt to construe the issues in a misleading manner.

The Appellant raised substantial federal constitutional issues in his Petition for a Writ of Prohibition and the Appellee responded to those federal constitutional issues in its Answer. No claim was made by the Appellee at that time that the issues presented by the Appellant involved merely state, as opposed to federal, constitutional issues.

The leading treatise on federal practice states that the United States Supreme Court, in cases where the basis of the state judgment is not clear and where the non-federal ground is not substantial or sufficient, may presume that the state court based its judgment on the law raising the federal constitutional question and invoke its jurisdiction. 12 Moore's Federal Practice §511.01, at 8-67 (2d Ed. 1982). In this case, the substantial issues are the defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution. The Appellant did not raise any substantial state constitutional issue

in his Petition for a Writ of Prohibition or his Jurisdictional Statement, nor has the Appellee cited any substantial state constitutional argument which would supercede the substantial federal constitutional issues presented. For the state to now say that the federal constitutional issues were not the substantial issues before the Minnesota Supreme Court is a frivolous and incorrect statement.

The Appellee has argued that the Petitioner bypassed the "normal" procedures to seek an extraordinary remedy. Again, the Appellee has misstated the facts. The judge had already ordered the reimbursement of court-appointed attorney's fees without a hearing. The Appellant could only conclude from the letter sent to him on December 30, 1982, that the purpose of the hearing was not to determine whether or not he was still indigent but to show cause why he should not be imprisoned for non-payment of the amount ordered by the Court. To say that the Appellant bypassed "normal" procedures is simply a frivolous and incorrect argument.

The answer of the Appellant was to seek legal counsel and assert a defense to the Court's attempt to collect the fees. The extraordinary nature of a writ of prohibition is an appropriate remedy to stop the illegal actions of a court. In this case, the Appellant believed that the enforcement of the Order mandating reimbursement of the court-appointed attorney's fees was wrong and proceeded in the correct manner. The Minnesota Supreme Court had the same information before it and could also conclude that the Appellant was asserting a federal constitutional defense to the Order mandating the reimbursement of court-appointed attorney's fees.



The Appellee has also misstated the holding in Fuller v Oregon, 417 U.S. 40, 94 S.Ct. 2116, 40 L.Ed.2d 642 (1974), James v Strange, 407 U.S. 128, 92 S.Ct. 2027, 32 L.Ed.2d 600 (1972). In Fuller, the court stated that court-appointed attorney's fees should not be assessed against an acquitted defendant. Id. at 48-49 and 57.

The Appellee has also misstated the holdings in United States v Durka, 490 F.2d 478 (1973), and United States v Pinckney, 491 F.Supp. 82 (W.D.Mo. 1980). In Durka, the decision of the court was not based upon any constitutional basis but upon federal statutory authority. The Appellee misstates the holding as it relates to acquitted defendants by arguing otherwise. In Pinckney, there is no statement in the case which states that it is constitutionally correct to order acquitted individuals to reimburse the appointing authority for court-appointed attorney's fees. The Pinckney case merely discusses the theoretical application of such a law to acquitted defendants, suggesting that an acquitted defendant may possibly be liable for court-appointed attorney's fees if his condition improves. The court stated no basis for its theory.

In addition, the case in People v Amor, 12 Cal.3d 20, 523 P.2d 1173 (1974), was incorrectly used by the Appellee. The Amor decision applied to convicted defendants and not acquitted defendants. As to acquitted defendants, the court merely hypothesized that an order requiring an acquitted defendant to reimburse the state for court-appointed attorney's fees was not a punishment within the meaning of California law. Id. at 1178. No authority was cited for this hypothesis and one can only assume that the

court ignored the holdings in James and Fuller. In an earlier case, In Re Allen, 71 Cal.2d 388, 455 P.2d 143 (1969), this same Court held that the reimbursement of court-appointed attorney's fees as a condition of probation was a violation of the Sixth Amendment to the United States Constitution. It seems inconsistent to hold that a court cannot order reimbursement of court-appointed attorney's fees as a condition of probation, and then hypothesize that an acquitted defendant would be responsible for repayment for such fees. For the Appellee to cite the Amor case as authority for the proposition that acquitted defendants can be made to reimburse the appointing authority for court-appointed attorney's fees is a misstatement of the Amor decision.

The Appellee also states that the Appellant did not raise the equal protection issue below. This statement is false. Appellant asserted in his Petition for a Writ of Prohibition, Paragraph 5 (Jurisdictional Statement, B-2), that a violation of federal constitutional law existed and cited the James case. The holding in James provides that it is a denial of equal protection to deny convicted defendants, ordered to reimburse the appointing authority for court-appointed attorney's fees, the same exemptions as other civil debtors. Appellant properly raised the issue by citing the James case, and the exact language or form is not necessary.

It should also be noted that the State of Minnesota has not in the past recognized that defendant's may claim exemptions from paying court-appointed attorney's fees as other civil judgment debtors may claim such a right. The Court in this case did not even bother to inquire about the Appellant's ability to pay the amount ordered or whether the Appellant qualified for an exemption.

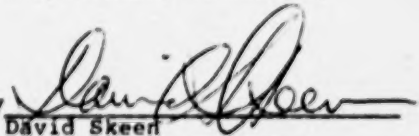
**CONCLUSION**

The Appellant raised substantial federal constitutional issues below and the State responded to those issues. Adequate federal constitutional grounds exist for the Court to note probable jurisdiction and proceed to determine this case on the merits.

Dated this 7th day of April, 1983.

Respectfully submitted,

By



David Skeen  
Attorney for Defendant  
and Volunteer Attorney for  
MN Civil Liberties Union  
880 Lumber Exchange Building  
10 South 5th Street  
Minneapolis, Minnesota 55402  
612/333-3343

OF COUNSEL:

Amy Silberberg  
MN Civil Liberties Union  
628 Central Avenue  
Minneapolis, Minnesota 55414